IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7030 of 1990
With
SPECIAL CIVIL APPLICATION No. 7578 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABARI KHUMABHAI KESRABHAI & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BB NAIK for Petitioner(s) : 1 - 2.
NOTICE SERVED for Respondent(s) : 1,
Mr S P Hasurkar, AGP for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA
Date : 01/02/2006

ORAL (COMMON) JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Since all the petitions of this group arise from the same land acquisition proceedings and the facts as well as law involved in the

proceedings are also same, they have been heard together and now they are being disposed of finally by this common judgment.

2. The petitioners of all these petitions are the agriculturists and they owned their agricultural lands in Village Garudi, Taluka Modasa. Their lands were acquired by the respondents for constructing canal to supply water from the irrigation project known as Mazum River Dam Project. On completion of the acquisition proceedings, award was made by respondent no.3 on 27.11.1986. It is the say of the petitioners that some of them were present at the time of pronouncement of the award and some were absent. However, there are no details available on record with regard to which of the petitioners were present and who were absent. However, it is an admitted fact that the certified copy of the award was applied for on 20.12.1986 and it was ready for delivery on 9.1.1987. The delivery was taken on 12.1.1987. Since the petitioners were not satisfied with the rate of compensation determined by respondent no.3, they made an application to him on 3.2.1987 under section 18 of the Land Acquisition Act (for short, 'the Act') requesting to make reference to the concerned District Court for enhancement of the award. In response to the application, respondent no.3 intimated the learned Advocate for the petitioners vide letter dated 5.10.1987 that since the applications were not submitted within the prescribed time limit under the provisions of section

18 of the Act, no reference could be made. It is this decision of respondent no.3 which is under challenge in these petitions. The common prayer is that the said decision be quashed and set aside and to direct respondent no.3 to entertain the applications of the petitioners for making reference under section 18 of the Act and to make reference to the concerned Court.

3. We have heard Mr B B Naik, learned Advocate appearing for the petitioners in all the matters and Mr Hasurkar, learned AGP for the respondents. It is submitted by Mr Naik that the petitioners had immediately applied for the certified copy of the award and when it was received, without any delay the applications were submitted on 3.2.1987. He, in his submission, stated that the period taken for preparation of the certified copy of the award was required to be given set off while computing the period of limitation. This submission has been vehemently contested by Mr Hasurkar. It is submitted by him that when the petitioners were present at the time of declaration of the award, they were required to submit application within six weeks from the date of the award and, therefore, respondent no.3 was completely justified in turning down the request of the petitioners.

4. We have carefully considered the rival submissions. We have also closely perused the contents of the petitioners as well as the documents annexed thereto. Though it is the say of the petitioners that some of the

petitioners were not present at the time of the pronouncement of the award, it is not clear who were present and who were not. In view of the same, we have to presume that all of them were present and then to proceed to consider the question whether there was delay in submitting the applications by the petitioners.

5. So far as the application under section 18 of the Act is concerned, it is required to be made in accordance with the time limit prescribed in Clause (a) and (b) of sub-section (2). Clause (a) of sub-section (2) provides that if the person making the application was present or represented before the Collector at the time when he made his award, the application by such person has to be made within six weeks from the date of the Collector's award. As stated above, in our opinion, all the petitioners were either present or represented before the Collector at the time the award was made. Therefore, they were required to submit applications under section 18 to the Collector within six weeks of the date of pronouncement of the award. It is submitted by Mr Naik that since the petitioners did not know the contents of the award, with a view to challenge it before the concerned reference court, they had applied for certified copy of the award on 20.12.1986 which was within six weeks from the date of the pronouncement of the award. He has, further submitted that the copy was ready for delivery only on 9.1.1987 and the

applications were submitted on 3.2.1987. Therefore, the period taken for preparation of the certified copy was required to be given set off while computing the period of limitation. Submission of Mr Naik cannot be accepted for two reasons. First of all, it is a proposition of law laid down by the Full Bench of this court that time spent for preparing certified copy of the award is not at all required to be given set off. The second reason is that even if the submission of Mr Naik is accepted and if the time spent for preparation of the certified copy is adjusted, there is a delay of about 25 days in submitting the application. It is a well settled principle of law by now that the Collector has no power to condone the delay. The Full Bench of this Court in its judgment in the case of *Special Land Acquisition Officer, Himatnagar v. Nathaji Kacharaji*, reported in 2001 (3) GLH 312 has explained provisions regarding delay as contained in section 18 and section 28A of the Act. It has also considered the question whether the time required for furnishing the copy of the award to the claimant is required to be excluded while computing the period of limitation. In the opinion of the Full Bench, such time cannot be excluded while computing the period of limitation. The court has placed reliance on an earlier decision as well as the provisions of section 28A of the Act to make a comparative study of both the provisions i.e. Section 18(2) and 28A of the Act. The court has taken into consideration the fact that under the

provisions of section 28A (1), in particular proviso to sub-section (1) of the said section it is provided that the time spent for obtaining the copy of the award of the court should be excluded while computing the period of limitation. No such specific provision is made in section 18(2) of the Act. In view of the same, the Full Bench has held as under:

> "Under sub-section (1) of section 28A, a person seeking reference through the Collector of his case on the basis of award of another landowner covered by the same notification, has to make application within the prescribed three months' period of limitation from the date of award. The proviso to sub-section (1) of section 28A expressly allows exclusion of date of passing of the award by the court and time requisite for obtaining copy of the award of the court for computing the period of limitation. What is noticeable is that such exclusion of time of date of passing of the award and obtaining copy of the award is not to be found in section 18 of the Act which enables land owner to seek reference by making application to the Collector within prescribed period of limitation, i.e six weeks or six months as the case may be. Obviously, therefore, as has been rightly pointed out by the learned Judges of the Division Bench who have made this Reference

> to the Full Bench, the proviso below section 28A of the Act cannot be made applicable directly or by implication to the proviso to section 18 of the Act, as doing so would be violence to the provisions of section 18 under consideration."

Thus it is clear under proviso (a) and (b) to sub-section (2) of section 18 the time spent for preparing certified copy of the award cannot be excluded while computing the period of limitation. There is no reason for us to deviate from the proposition of law laid down by the aforesaid decision.

6. In view of the aforesaid, we cannot accede to the request made by the petitioners in these petitions and grant the reliefs as prayed for. These petitions are accordingly dismissed. Rule discharged in each petition with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp